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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12
13 **ACHILLES D. CORELLEONE,**

14 Plaintiff,

15 v.

16 **STATE OF CALIFORNIA, et al.,**

17 Defendants.

18
19 07cv2094 L (NLS)

**NOTICE OF MOTION AND
MOTION TO DISMISS
DEFENDANT STATE OF
CALIFORNIA (FED. R. CIV. P.
8(a)(2), 12(b)(1), and 12(b)(6))**

Hearing: April 28, 2008
Time: 10:30 a.m.
Courtroom: 14
Judge: The Honorable M.
James Lorenz

20
21 **NOTICE OF MOTION AND MOTION**

22 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 PLEASE TAKE NOTICE THAT, on April 28, 2008, at 10:30 a.m. in Courtroom 14 of
24 the above-entitled Court, located at 940 Front Street, San Diego, California, 92101, defendant
25 State of California will move the Court for an order granting its motion to dismiss with prejudice
26 and without leave to amend each of the causes of action asserted against defendant State of
27 California.

28

The motion is based on the following grounds:

1. This Court lacks subject matter jurisdiction over the complaint because the State of California is immune from this Suit under the Eleventh Amendment (Fed. R. Civ. P. 12(b)(1));

4 2 This Court lacks subject matter jurisdiction over the claims for injunctive relief
5 because plaintiff lacks standing to seek such relief (Fed. R. Civ. P. 12(b)(1));

6 3. Plaintiff has not stated a claim upon which relief can be granted because the State
7 of California is not a “person” within the meaning of 42 U.S.C. § 1983 (Fed. R. Civ. P.
8 12(b)(6));

4. The Complaint fails to meet the basic requirements of Fed. R. Civ. P. 8(a)(2).

10 This motion is based upon this Notice of Motion and Motion, the accompanying
11 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any other
12 matter that may properly come before this Court.

14 || Dated: February 13, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

CHRISTOPHER E. KRUEGER
Senior Assistant Attorney General

CONSTANCE L. LELOUIS
Supervising Deputy Attorney General

/S/ Daniel J. Powell

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Notice of Motion, Motion to Dismiss.wpd
SA2008100368

CERTIFICATE OF SERVICE BY U.S. MAIL

Case Name: *Corelleone, Achilles D. v. State of California, et al.*
Case No.: 07-cv-2094 L (NLS)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 13, 2008, I served the following documents:

(1) NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANT STATE OF CALIFORNIA (FED. R. CIV. P. 8(a)(2), 12(b)(1), AND 12(b)(6))

(2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS DEFENDANT STATE OF CALIFORNIA

(3) [PROPOSED] ORDER GRANTING DEFENDANT STATE OF CALIFORNIA'S MOTION TO DISMISS

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Archilles D. Corelleone
General Delivery
San Diego, CA 92138
Pro se**

Electronic Mail Notice List

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case:

None

Manual Notice List

The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

Archilles D. Corelleone
General Delivery
San Diego, CA 92138
Pro se

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 13, 2008, at San Francisco, California.

Susan Chiang

Declarant

Signature

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